

**UNITED STATES GOVERNMENT**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 10**

**PINKERTON GOVERNMENT SERVICES<sup>1</sup>**

**Employer**

**and**

**Case 10-RC-15511**

**INTERNATIONAL GUARDS  
UNION OF AMERICA, REGION 10,  
Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Pinkerton Government Services, herein referred to as the Employer, provides security services under contract to the Tennessee Valley Authority at its Watts Barr nuclear power plant located in Spring City, Tennessee. The Petitioner, International Guards Union of America, Region 10, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of all full-time and regular part-time armed response officers employed by the Employer at its Watts Barr facility and excluding all clerks, shift lieutenants, procedure sergeant, armory sergeant, armory lieutenant, training lieutenant, senior trainer, operations lieutenant, site project manager and other supervisors as defined by the Act.<sup>2</sup> A hearing officer of the Board held a hearing and the parties both filed briefs, which were duly considered.

The parties stipulated to the composite and scope of the unit. The only issue in dispute is the unit placement of three sergeants' classifications. The Employer asserts that the sergeants

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The parties stipulated that the shift lieutenants, procedure sergeants, armory sergeant, armory lieutenant, training lieutenant, senior trainer, operations lieutenant and the site project manager are all supervisors within the meaning of Section 2(11) of the Act. As supervisors, the parties' stipulated, that the persons occupying the above job classifications possess the authority to hire, fire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or to responsibly direct them and adjust their grievances or effectively recommend

are supervisors within the meaning of the Act, or alternatively, that the sergeants, even if not supervisors, do not share a sufficient community of interest with the armed response officers and that they should, therefore, be excluded from the stipulated unit.<sup>3</sup> The Petitioner contends that the sergeants should be included in the guard unit. The petitioned-for unit of armed response officers is comprised of approximately 123 employees. If the sergeants are included in the unit, the unit will consist of approximately 143 employees.

There are three classifications of sergeants in dispute, floor sergeants, central alarm system/secondary alarm system sergeants, herein CAS/SAS sergeants, and owner controller area sergeants, herein OCA sergeants. In total, there are 12 CAS/SAS sergeants, four OCS sergeants and four floor sergeants whose unit placement is in dispute.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the Employer presented sufficient evidence to establish that the sergeants in the three classifications possess certain of the authorities enumerated in Section 2(11) of the Act, and are, therefore, statutory supervisors and properly excluded from the Unit. Accordingly, I have directed an election in the petitioned-for unit, excluding the three classifications of sergeants.

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that support each of my conclusions on the issues.

## **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer operates four shifts and provides security services to the Watt's Barr nuclear plant on a 24-hour a day, 7-days a week schedule. Between 25 to 35 armed response officers, herein officers, work during each shift.

The Employer's chain of command is based on a military model. The security force is headed by the site project manager. Below the site project manager, in order of rank, are the operations lieutenant, four shift lieutenants, the sergeants and finally the armed response officers.

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such action. Based upon the parties' stipulation, I find that the employees in those enumerated job classifications are supervisors within the meaning of the Act.

<sup>3</sup> The Employer did not present any evidence on its alternative argument nor did its brief address it. I, therefore, find it unnecessary to consider this alternate position.

There are four shift lieutenants and one operations lieutenant. One shift lieutenant works each of the four shifts.

The facility is divided into two operational areas for security purposes. The area outside the perimeter security fence is referred to as the owner controlled area, or OCA. During each shift, the OCA is patrolled by three roving motor patrols and four additional officers assigned to the access gates. One OCA sergeant works per shift. The area inside the perimeter fence, including the facility itself, is referred to as the protected area. The protected area is secured by officers performing foot patrols as well as manning stationary security posts. During each shift, 20-30 officers are assigned the protected area. One floor sergeant works per shift.

Additionally, the facility and grounds are constantly protected by electronic alarms and remote cameras. The CAS/SAS sergeants monitor the electronic security cameras and alarms. On each shift, there are three CAS sergeants and one SAS sergeant. No officers are assigned to perform CAS/SAS monitoring functions.

## **II. THE STATUS OF THE SERGEANTS**

The sergeants in the disputed classifications are cross-trained and are regularly assigned to perform the duties of the other disputed sergeant classifications. Depending on the staffing and shift rotation schedule, an OCA sergeant may perform as a floor sergeant and vice versa. The specific duties of the three disputed sergeants' positions vary only slightly. Because the sergeants routinely perform each others duties and there is no record evidence that their authority differs, I will address the sergeants collectively.

### **1. SPECIFIC INDICIA OF SUPERVISORY STATUS**

It is well established that the party who asserts that an individual possesses supervisory status and should be excluded from any bargaining unit, bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). The possession or exercise of any of the authorities enumerated in Section 2(11) of the Act is sufficient to confer supervisory status upon an individual. *NLRB v. Kentucky River*, *supra*; *Queen Mary*, 317 NLRB 1303 (1995). Nevertheless, the Board is careful not to liberally construe the enumerated authorities because supervisory status excludes an individual from the protections afforded by the Act. *Tree-Free Fiber Co., LLC*, 328 NLRB 389 (1999). Therefore,

a finding of supervisory status is appropriate only if the exercise of those authorities set forth in the Act is not merely routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment. *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

The sergeants at issue herein possess the requisite authority to direct employees and effectively recommend their discipline, reward, and hire.<sup>4</sup> Furthermore, the record demonstrates that certain secondary indicia of supervisory status exist among the disputed classifications. It is axiomatic that secondary indicia of supervisory status are not dispositive, standing alone, on the issue of supervisory status. *North Jersey Newspapers Co.*, 322 NLRB 394 (1996). However, as the sergeants' possess demonstrated supervisory authorities, I will consider the secondary indicia as urged by the Employer.

#### **A) Responsible Direction of Employees**

At the beginning of each shift, officers, sergeants and lieutenants attend a shift briefing meeting. Prior to shift changes, lieutenants and sergeants meet with the outgoing shift leaders to receive information relevant to the upcoming shift. The incoming shift lieutenant and the sergeants then meet with the incoming officers prior to starting the shift. At the meeting, roll call is taken and the sergeants and lieutenants present information to the officers, e.g. upcoming training, procedure changes, and general announcements.<sup>5</sup>

After the briefing meetings, the CAS/SAS sergeants monitor the facility's alarm systems from the CAS/SAS offices. In the event of an alarm, the CAS or SAS sergeants contact officers and direct them on how to respond to an alarm. In the case of an alarm set off by equipment malfunction, the CAS/SAS sergeants are responsible for directing officers to physically man the area affected by the alarm's failure. This assignment of officers to cover inoperable systems is required by the Nuclear Regulatory Commission regulations and is termed "compensatory coverage." In addition to monitoring alarms and dispatching officers, the CAS/SAS officers

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<sup>4</sup> There was insufficient evidence that the sergeants exercise any of the other authorities set forth in Section 2(11) of the Act.

<sup>5</sup> Much testimony was devoted to the sergeants' participation in the shift briefing meetings. While it is clear that the sergeants actively participate and present information and assignments to the officers at the meeting, it remains unclear whether the sergeants exercise any independent judgment or whether they simply present prepared materials to the officers consistent with instructions from the lieutenants and the site project manager.

must complete administrative reports if any “unusual” event occurs, for instance a malfunctioning alarm or an attempted unauthorized entry into the site.<sup>6</sup>

While many of the elements of the CAS/SAS response to any security situation are dictated by the regulations, the testimony established that a certain amount of discretion is afforded the sergeants in formulating a response and not every contingency is scripted. For instance, depending on staffing, the CAS/SAS sergeant will exercise his or her judgment in determining which officer and/or how many officers to reassign. Again, whereas generally the officer assignments are dictated by the post rotation schedule, when no relief officer is available,<sup>7</sup> the CAS/SAS sergeant must exercise his or her discretion in assigning an officer to cover the post.<sup>8</sup>

After the shift briefing meeting, the floor and OCA sergeants spend a majority of their day performing “post visits” and administrative functions; the sergeants rarely perform the guard duties of the officers. The sergeants spend four or more hours a day conducting post visits and are required to visit each post at least twice a day. During a post visit, the sergeant evaluates whether the officer is in possession of all required equipment, determines whether the officer is performing his duties properly and evaluates whether the officer is “fit for duty.” If the sergeant determines that the officer is not performing satisfactorily, the sergeant may “coach” the employee on proper procedure, remove the officer from his post, require remedial training or document the infraction as a disciplinary offense. The sergeant’s response is based upon his assessment of the severity of the violation. These corrective actions will be discussed in more detail, *infra.* at B. Discipline. If the sergeant believes that an officer is not “fit for duty” he can relieve the officer of his post.

In addition to the regular post visits, the floor and OCA sergeants, as well as the CAS/SAS sergeants, are required to complete formal observations of officers each week as part of the Employer’s “EIP”<sup>9</sup> Observation Program. As part of the formal observation, in addition to performing the same assessment of the officers performed during routine post visits, the sergeant

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<sup>6</sup> While the event is termed “unusual”, this terminology refers to a departure from standard operating procedures. “Unusual” in this context does not indicate that the event is infrequent.

<sup>7</sup> On each shift one or more officers are assigned as “relief officers”. These officers have no assigned post, but can be moved as needed to provide security coverage at any post at the facility. Nevertheless, based on the evidence it appears that attendance is an issue and on a regular basis there is no relief officer available.

<sup>8</sup> I note that there is no change in the officers’ pay as a result of these reassignments.

<sup>9</sup> The abbreviation EIP was not specifically defined in the record, and no explanation of title “former observation” reports was offered.

may question the officer on his knowledge of proper procedures and applicable regulations. After completing the observation of an officer, the sergeant is required to document his findings. The Employer provided a number “Former Observations,” the form upon which the EIP Observation is documented, which were performed by sergeants. On that form, the sergeant must note whether the officer meets, meets some, or exceeds expectations. Additionally, the sergeant must note whether he did any coaching and provide comments on his observation. A copy of the Former Observation report is provided to the officer, the site project manager and another copy is maintained in the employee’s personnel file. These documents can be considered during an employee’s performance evaluation and/or application for promotion.<sup>10</sup>

A review of the EIP “Former Observations” establishes that the sergeants do exercise independent judgment in their evaluation of employees. For instance, on January 18, 2005, Sergeant Danny Creason observed officer Jon Falls and commented that he had “Coached Officer Falls on the Importance of Reading each Site Security Instruction . . . daily. Officer Falls needs Improvement in the way of motivation to be the best security officer he can be. . .” In contrast, other reports are complimentary, for instance, on February 25, 2005, Sergeant Mailhos reported that “Officer J. Dye is deemed by this observer to be very effective, dependable, honest, loyal and trustworthy. He is an asset to C-Squad . . .”

In addition to the posts visits and EIP Reports, sergeants are responsible for relieving employees from their posts for breaks. Sergeants arrange to have the posts covered by other officers and may be required to reassign employees to accomplish this. Normally, the sergeant would reassign a “relief” officer; however, depending on staffing, the sergeant may be required to exercise independent judgment and reassign employees from other posts. Similarly, in response to alarms or other incidents, sergeants must dispatch officers to address the security threat. These decisions require the sergeant to evaluate the training and ability of the available officers and assess which occupied post can be temporarily abandoned during the reassignment of officers in order to provide adequate security coverage.

## **B. Discipline of Employees**

The Employer maintains a formal progressive discipline policy. The first step of the progressive disciplinary policy is “informal.” Such informal action includes any oral or written

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<sup>10</sup> I note that the record does not reveal what weight these reports are afforded relative to performance appraisals and promotion opportunities.

counseling documented for the employee's personnel file by a letter of counseling. After the letter of counseling, the disciplinary procedure escalates to the "formal" disciplinary stage. The formal stage of the progressive disciplinary policy includes written reprimands, suspension and termination.

At the hearing, the Employer entered into evidence seven Employee Disciplinary Action Reports completed by sergeants.<sup>11</sup> The reports include written disciplinary reports for infractions including assuming a post without required equipment, officers' failure to lock their weapons lockers, and failure to properly turn over keys at the conclusion of an officer's post. Armory Sergeant Rex Smith, who issued four of the Employee Disciplinary Action Reports, testified that while he would notify the shift lieutenant of his decision to issue discipline, such notification was purely a courtesy and could occur either before or after the discipline issued. In contrast, the Union's witness, Sergeant Jeff Hester, testified that only a lieutenant could issue discipline, but offered no explanation as to the written disciplinary reports issued by his fellow sergeants.<sup>12</sup> Based on the weight of the evidence, I conclude that sergeants in the disputed classifications exercise independent judgment and possess the authority to issue discipline to officers.<sup>13</sup>

In addition to written discipline, sergeants may require officers to undergo remedial training. If a sergeant observes an officer in violation of the established rules or procedures, the sergeant can relieve the employee of his post and provide remedial training. If remedial training is required, the sergeant completes a report indicating the infraction and the type of training provided. All the witnesses at the hearing testified that the written reports on remedial training are not disciplinary, however, the witnesses confirmed that officers view them as disciplinary. Moreover, the reports are considered for purposes of annual appraisals and promotion and if the officer engages in a repeat violation, a remedial training report may serve as the basis for discipline. The sergeant determines, based upon his assessment of the nature of the violation, whether the officer should be provided remedial training, discipline or both.

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<sup>11</sup> The Employer's witnesses testified that these Action Reports represent only a sampling of a much larger compilation of reports authored by the sergeants.

<sup>12</sup> The Employer notes in its brief that Hester's failure to exercise the authority to discipline can be explained by his relative inexperience as a sergeant and by the fact that he is a "floating" sergeant and therefore has no regularly assigned officers.

<sup>13</sup> The record also contains "Absence Report" forms completed by sergeants. The reports state that they are issued as written warnings due to the officers' accrual of points for absenteeism. However, as the Employer's absenteeism

### **C. Reward Employees**

The Employer provides two types of rewards for officer's performance: "Officer of the Quarter" recognition and "Well Done" awards. Sergeants are required to submit nomination forms for "Officer of the Quarter" for at least two officers each quarter. Selection as "Officer of the Quarter" results in a certificate and a \$100.00 savings bond; selection may also be considered during performance evaluations or promotion decisions. Recipients are selected by the Project Site project manager based upon the recommendations received.

"Well Done" awards are the Employer's system for acknowledging outstanding job performance by any of its employees or supervisors. Sergeants routinely recommend officers for these awards, submitting the recommendation to their superiors for approval.<sup>14</sup> A well-done award may result in a gift certificate and will be considered during performance evaluations and promotion decisions. Lieutenant Mary Jo Turney, who was promoted from a sergeant's position, testified that she regularly receives "Well Done" nomination forms from sergeants and, as lieutenant, has granted such awards based on the sergeants' recommendations without independent investigation.

### **D. Hiring**

Sergeants have participated in interviews of candidates for employment.<sup>15</sup> The Employer's written policy on hiring provides that a candidate's interview be conducted by a team "comprised of the operations lieutenant and two shift supervisors (lieutenants or sergeants)." Rex Smith, testified that as a floor sergeant he participated in interviewing candidates for employment and that certain of those candidates were hired. Smith was involved in the team interview and scored candidates on their response to prepared questions. The scores of all the interviewers are tallied so that each interviewer's responses are afforded equal weight

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policy requires that employees be disciplined after accruing a certain number of points I cannot conclude that the issuance of these absence reports requires independent judgment.

<sup>14</sup> While the witnesses testified that officers may also make such nominations, no witness recalled any occasion in which an officer had made such a recommendation.

<sup>15</sup> The Employer asserts that sergeants have effectively recommended the promotion of officers. While the Employer's written policy clearly permits sergeants to participate, no probative evidence was presented that this authority has ever been exercised. Smith testified that he participated in the promotion selection process for other facilities run by the Employer, but not at the Watts Barr facility. Similarly, while Turney participated in a promotion interview as a sergeant, her participation was under the predecessor employer and not for the present Employer. Based on this evidence, I can not conclude that sergeants have ever exercised the authority to participate in promotion decisions.



in the selection of candidates. Further, Lieutenant Mary Jo Turney testified that, as lieutenant, she has asked sergeants to participate in upcoming interviews of applicants for employment.

#### **E. Overtime and Time Off**

On the present record, I am unable to assess whether sergeants involvement in overtime and time off is sufficient to establish supervisory authority. Sergeant Rex Smith testified that sergeants accept telephone calls from employees who call to report an absence. In accord with established policy, the Sergeant can approve up to two employees absences, thereafter, a lieutenant would have to approve any other employee absences. According to Smith, approval of the two call-ins is automatic, and there is no evidence that the sergeants exercise any judgment in approving these absences. While Lieutenant Mary Jo Turney testified that a Sergeant could deny an employee's request for time-off, she also testified that she was not aware of any request being denied. Sergeant Jeff Hester, the Union's witness, testified that he had no authority to grant leave request or call-ins and only lieutenants can grant these requests. As a result, I can not determine whether the sergeants exercise independent judgment in determining whether to approve absences or grant leave.

With regard to the sergeant's authority to authorize and/or require employees to work overtime, there was conflicting testimony. Sergeant Smith testified that as a sergeant he has made overtime assignments. However, overtime assignments are made in accordance with the Employer's established procedure for filling overtime, i.e. the officer with the least number of hours is required to work overtime. Each officer can refuse overtime one time per quarter and the refusal is automatically approved. Smith testified that a lieutenant would approve an employee's request not to work overtime.<sup>16</sup> In contrast, the Employer's witness, Lieutenant Mary Jo Turney, testified that she and other sergeants had approved reasonable requests to be excused from overtime, for instance a prior doctor's appointment. Turney testified that other sergeants, including Sergeant Smith, had previously granted employees' requests to be excused.

The assignment of the overtime hours is routine in nature, as the sergeants follow a detailed procedure to determine who will receive such, and thus, the assignment of overtime does not require the requisite independent judgment required by the Act. Further, as Smith and

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<sup>16</sup> Smith did indicate that an exception was made for an officer on military leave. However, this testimony was too unclear to render it probative.

Turney's testimony is contradictory, I can not determine whether sergeants possess the authority to approve requests to be excused from overtime.

## **2. Secondary Indicia**

The record establishes that sergeants are routinely referred to by the Employer and officers as supervisors. In fact, the sergeants name tags identify them as supervisors, not sergeants. Last year, Sergeant Rex Smith received the Employer's "Supervisor of the Year" award for the facility, and in the prior year another sergeant, Sergeant Christmas, received the award.

In addition to the perception that the sergeants are supervisors, other secondary indicia were established. Sergeants are paid between \$4.00 and \$6.00 more an hour than officers, and receive more training than officers. The record establishes that sergeants participate in quarterly supervisors meetings. Finally, if the sergeants are not supervisors, the ratio of supervisors to employees is unusually high. There is only one lieutenant per shift of 25 to 35 officers, or a 1:25-35 ratio. In contrast, if the sergeants are supervisors, the ratio of supervisors to employees is more realistic 7:1.<sup>17</sup>

## **III. Analysis**

The record demonstrates that the sergeants possess and exercise several of the authorities required for a finding of supervisory status. Sergeants routinely exercise their independent judgment when evaluating officers during post visits and EIP observations. The sergeants' evaluation of the officers job performance can result in positive or negative comments on the EIP observation report which is included in the employee's personnel file. The sergeants' observations may also result in remedial training and/or discipline. Repeat infractions of any rule or regulations for which remedial training has previously been provided may result in discipline, at the sergeant's discretion; if a sergeant deems the initial infraction sufficiently egregious, the sergeant can issue discipline and require concurrent remedial training.

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<sup>17</sup> The parties stipulated that the armory sergeant and the training sergeant are supervisors within the meaning of the Act. However, based upon the present record it does not appear that they provide day-to-day direct supervision for any of the unit employees, even though vested with such supervisory authority. Therefore, I have not included them in the above ratios. Nevertheless, even if these two stipulated supervisors were included in the ratios, any ratio that excluded the sergeants in dispute would still be impracticable.

Furthermore, based on the sergeant's independent assessment of officers, the sergeant may recommend an officer for either "officer of the year" or for a "well-done" award, both of which result in a monetary award. Remedial training, discipline and receipt of awards are considered by the Employer during employee performance evaluations and for purposes of promotion. It is clear that the sergeants' decisions in these matters require the exercise of independent judgment and are not merely routine or clerical in nature. Moreover, the sergeants' actions may affect the officers' performance review, promotion or future discipline. The exercise of any one of the authorities set forth in the Act is sufficient to bestow supervisory status. *Miller Electric Co.*, 301 NLRB 294 (1991). As, the sergeants herein possess several of the requisite authorities, they are, therefore, supervisors within the meaning of the Act.

In a guard unit, a sergeant's effective recommendation of discipline of unit employees is sufficient to establish supervisory status. *Midvale Company*, 114 NLRB 372 (1955). The record establishes that the sergeants have been given the authority to assign, discipline and recommend employees for rewards. While the Union's witness, Sergeant Hester, testified that he had never exercised those authorities, his failure to exercise the authorities may be attributed to his status as a floating sergeant. Moreover, it is unnecessary for the Employer to present evidence that every disputed individual has exercised supervisory authority, as the Employer amply demonstrated that each of the sergeants shared the same authority, whether exercised or not. *Pepsi Cola Co.*, 327 NLRB 1062, 1064 (1999).

In *Burns International Security Services, Inc.*, 278 NLRB 565 (1986), the Board found that sergeants at a nuclear power facility were supervisors where they made post assignments, issued oral and written reprimands, required remedial training for substandard performance and participated in evaluating employees. 278 NLRB at 571. Similarly, the sergeants herein possess the same authorities which the board found sufficient in *Burns*; moreover, the duties and responsibilities of the sergeants in that case were virtually identical to those at issue herein as the sergeants in *Burns* provided security at a nuclear power plant regulated by the Nuclear Regulatory Commission.

In addition to the actual exercise of these enumerated authorities, the record demonstrates several secondary indicia of supervisory status. The sergeants attend supervisory meetings where personnel matters are discussed, receive a higher wage and are held out by the Employer and perceived by other employees as supervisors. Significantly, the ratio of supervisors to

guards would be unusually high if sergeants are not supervisors, at a ratio of 1:25. The Board noted in *Burns Security*, 278 NLRB 565, even a 2:1 ratio for guards to supervisors is not disproportionate at a nuclear power facility, as “strict security requirements at a nuclear power plant” necessitate a low ratio of supervisors to unit employees. Based thereon, a 1:7 ratio of supervisors to guards at the Employer’s Watts Barr facility seems entirely reasonable.

As set forth above, the record establishes that the three classifications of sergeants at issue have the authority to assign and direct officers work, to discipline employees, and to effectively recommend the reward and hire of employees, and that these actions are undertaken using independent judgment. Accordingly, I conclude, based on the foregoing, that the sergeants are Section 2(11) supervisors and they will be excluded from the unit herein found to be appropriate.

The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time armed response officers employed by the Employer at its Watts Barr facility and excluding all clerks, CAS/SAS sergeants, OCA sergeants, floor sergeants, procedure sergeant, armory sergeant, shift lieutenants, armory lieutenant, training lieutenant, senior trainer, operations lieutenant, site project manager and other supervisors as defined by the Act.<sup>18</sup>

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Guards Union of America, Region 10. The date, time and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees

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<sup>18</sup> The unit description was stipulated by the parties.

who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia, on or before **May 9, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by

facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EST) on May 13, 2005. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 2nd day of May, 2005.



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